

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 266 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE and

MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

( No. 1 to 5 NO )

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STATE OF GUJARAT

Versus

PRABHADSINH GULABSINH

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Appearance:

MR. K.C. SHAH, LD. PUBLIC PROSECUTOR for Petitioner

MR SUNIL C PATEL for Respondent No. 1, 2

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CORAM : MR.JUSTICE S.D.DAVE and

MR.JUSTICE Y.B.BHATT

Date of decision: 03/09/97

ORAL JUDGEMENT

Per: S.D. Dave, J:

The Respondents accused came to be acquitted of the offence punishable under section 302 and section 302

read with section 114 I.P.C. by the Ld. Sessions Judge, Panchmahal at Godhra in Sessions Case No. 73 of 1984 under the orders dated November 30, 1984. The said orders of acquittal are in challenge in the present Appeal filed by the Appellant State.

The two Respondents accused were put on trial for the alleged commission of the above said offences on the accusation that, on April 27, 1984, at about 1.30 p.m. the accused no.1 had assaulted upon the deceased Amarsinh at village Vaghjipur under Sahera taluka under the Panchmahal district, and had given dharia blows, as a result of which he had died within an hour. The accusation against the Respondent no.2 is that, he had caught hold of the deceased and therefore, the charge against him was for the offence punishable under section 302 read with section 114 I.P.C. The above said charges at exhibit-3 came to be denied by the Respondent accused. On the appreciation of the prosecution evidence the ld. Sessions Judge was pleased to come to the conclusion that the charges against the accused persons were not proved. The above said finding of the ld. trial Judge has resulted in to the orders of acquittal which are in challenge before us.

The Court below has taken in to consideration two pertinent aspects of the matter. It was the case of the prosecution that, the deceased came to be assaulted at or near his house, but looking to the panchanama of the scene of occurrence at exhibit-31 it was duly established that the incident had taken place in the osary of the house of the Respondent accused no.2. The other aspect taken in to consideration by the Court below is that, the complainant Ranjitsinh was an accused in Sessions Case No. 81 of 1984 in which the charge against him was that, he had set the house of the accused no.2 to fire and that, neither the complainant nor the prosecution witnesses were able to say anything which would throw light upon the way and the manner in which the entire incident had occurred.

Upon the reading of the evidence of the complainant Ranjitsinh, we are satisfied that, in fact the incident had occurred in the osary of the accused no.2. The very same conclusion would follow from the panchanama of the scene of occurrence at exhibit-31. The complainant and prosecution witnesses were obliged to admit during the cross examination that the house of the Respondent accused no.2 was put on fire and that, there was a cross Sessions Case against the complainant. The reading of the evidence goes to support the finding

rendered by the ld. Sessions Judge that, despite this fact, there was absolutely no explanation coming from the prosecution side regarding the incident during which the house of the Respondent accused no.2 came to be set ablaze. The Court below placing reliance upon the Supreme Court pronouncement in case of Laxmisingh & Ors vs. State of Bihar, Cr.L.R. 1976 S.C. pg. 2263 has come to the conclusion that, though it was a case in respect of the injuries which came to be sustained by the accused, a parity of reasoning could be drawn for coming to the conclusion that an important aspect regarding the setting the house of the accused no.2 to fire was required to be explained and that, if that is not done, it should be said that the genesis of the occurrence was being suppressed and the entire episode during which the incident had occurred was not unfolding to the fullest extent by the evidence tendered by the prosecution before the Court below. On the appreciation of the entire evidence on record, we feel that the ld. Sessions Judge was perfectly justified in coming to the above said conclusion.

It is now well settled that, while deciding the acquittal appeal, the Appellate Court is required to seek an answer to the question whether the findings of the trial Court are (i) palpably wrong, (ii) manifestly erroneous, (iii) demonstrably unsustainable, and that the acquittal can only be reversed in view of any of the above said three questions being answered in the affirmative, under which any one of the three infirmities could be established. We are not in a position to say that the Judgment of Acquittal rendered by the Court below and the findings therein would fall within any of the three above mentioned categories. Therefore, in our opinion, looking to the Supreme Court pronouncement in Ramesh Babulal Doshi, Appellant vs. The State of Gujarat, Respondent, 1996 (2) G L H pg. 206, no interference at our hands appears to be a justifiable exercise. The Appeal, therefore, requires to be dismissed. We order accordingly. In the result, the Judgment of Acquittal rendered by the Court below is hereby upheld and confirmed. The bail bonds in pursuance of the bailable warrants issued by this Court shall stand cancelled.

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